C.A.C. No. 130748

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Shand, 1997 NSCA 59

Roscoe, Pugsley and Bateman, JJ.A.

BETWEEN:

BLAIR DAVID SHAND		Ann M. Copeland for the Appellant
	Appellant	
- and -		
HER MAJESTY THE QUEEN		Stephanie A. Cleary for the Respondent
	Respondent	
		Appeal Heard: February 4, 1997
		Judgment Delivered: February 5, 1997

THE COURT: The appeal is dismissed as per reasons for judgment of Bateman, J.A.; Roscoe and Pugsley, JJ.A., concurring.

Bateman, J.A.:

The appellant, Blair David Shand, on the day scheduled for his trial, pleaded guilty to four counts of a ten-count indictment. Stays were entered in relation to the others. He appeals from the sentence imposed for those four offences.

Mr. Shand, driving while impaired by alcohol, caused the death of William Edward Daigle, contrary to s. 255(3) of the **Criminal Code** and, contrary to s. 255(2), caused bodily harm to the other three occupants of the car that Mr. Daigle was driving.

After a sentencing hearing, to determine the facts of this tragic event, Mr. Shand was sentenced to eight years' incarceration for the four offences and prohibited from driving a motor vehicle for the maximum 10-year period.

Mr. Shand appeals, alleging that the sentence is excessive. He says that the sentencing judge erred in that he did not treat Mr. Shand's addiction to alcohol as a mitigating factor, nor did he place sufficient weight on the mitigating effect of the injuries sustained by Mr. Shand in this tragic motor vehicle offence.

As directed by Iacobucci, J. speaking for the Supreme Court of Canada in **R. v. Shropshire** (1995), 102 C.C.C. (3d) 193, who endorsed the words of Matthews, J.A. of this court in **R. v. Pepin** (1990), 98 N.S.R. (2d) 238, we are only to interfere with a sentence "if the sentencing judge applied wrong principles or [if] the sentence is clearly or manifestly excessive".

In **R. v. C.A.M.** (1996), 105 C.C.C. (3d) 327 (S.C.C.) Lamer, C. J., writing for the court, further elaborated on the deference due the decisions of sentencing judges. He recognized those judges' "unique qualifications of experience and judgement from having served on the front lines of our criminal justice system". He wrote at paragraph 91:

> Perhaps most importantly, the sentencing judge will normally preside near or within the community which has suffered the consequences of the offender's crime. As such, the sentencing judge will have a strong sense of the particular blend of sentencing goals that will be "just and appropriate"

> for the protection of that community. The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing judge should thus not be interfered with lightly.

In a thorough and thoughtful decision Justice Jamie Saunders of the Supreme Court reviewed the applicable sentencing principles. He rejected Mr. Shand's evidence as to how the accident occurred, accepting that of the accident reconstructionist. He concluded, from a review of the pre-sentence report for this 38-year old repeat offender, that his prospects for reformation and rehabilitation are poor. He correctly identified that the principal emphasis for such an offence is general deterrence but found a need for specific deterrence as well. He noted that Mr. Shand had still not come to understand the tragedy of his actions; had not taken advantage of previous opportunities to deal with his longstanding substance abuse problem; that he was grossly impaired while committing this offence; that throughout his life he had demonstrated irresponsibility; that through his actions in committing these offences he had demonstrated callous disregard for the lives and safety of others, resulting in tragic consequences; that his previous periods of incarceration in a federal institution had not provoked any lasting, positive change; that the guilty plea by Mr. Shand had come only after several court appearances, including the preliminary inquiry; and that, while Mr. Shand had owned several automobiles throughout his life, he had never held a driver's licence.

Justice Saunders found the appellant's injuries, suffered during the commission of this offence, to be a mitigating factor. The circumstances of those injuries were not sufficient, however, to warrant a substantial reduction from an otherwise appropriate sanction. The appellant's submission to this court that his alcohol addiction should

have been treated as a mitigating factor rings hollow in view of his rejection of past opportunities to deal with his substance abuse.

Counsel for the appellant cites several cases in which the length of sentence for somewhat comparable offences had not exceeded six years. In none of those cases, however, were there this number of victims, nor did the accused present with the collection of negative features particular to Mr. Shand.

This court has consciously avoided establishing a benchmark for such offences in recognition of the great number of variables possible in the circumstances of the offence and the offender (see **R. v. MacEachern** (1990), 96 N.S.R. (2d) 68). As was said by MacKinnon, C.J.N.S. in **R. v. Grady** (1971), 5 N.S.R. (2d) 264 at p. 266:

> It would be a grave mistake, it appears to me, to follow rigid rules for determining the type and length of sentence in order to secure a measure of uniformity, for almost invariably different circumstances are present in the case of each offender. There is not only the offence committed but the method and manner of committing; presence or absence of remorse, the age and circumstances of the offender, and many other related factors. For these reasons it may appear at times that lesser sentences are given for more serious offences and vice versa, but the court must consider each individual case on its own merits, even if the different factors involved are not apparent to those who know only of the offence charged and the penalty imposed.

Justice Saunders committed no error. The sentence is within the appropriate range, taking into account the circumstances of this offender and this offence. While leave to appeal is granted, the appeal is dismissed.

Bateman, J.A.

Consented to:

Roscoe, J.A.

Pugsley, J.A.

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	)	Bateman, J.A.
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